



Order under Section 69 Residential Tenancies Act, 2006

Citation: Spillsbury Peterborough Properties Inc v Sawyer, 2023 ONLTB 54503

Date: 2023-08-02

File Number: LTB-L-024205-23

In the matter of: 502, 246 SPILLSBURY DR
PETERBOROUGH ON K9K0A1

Between: Spillsbury Peterborough Properties Inc Landlord

And

Shawn Sawyer Tenants
Melinda Siddle

Spillsbury Peterborough Properties Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Shawn Sawyer and Melinda Siddle (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 20, 2023.

The Landlord's legal representative Allistair Trent, the Landlord's agent Linda Langlois, and the Tenants attended the hearing.

Preliminary Issue:

1. At the hearing, the Tenants submitted that Melinda Siddle ("M.S") should not be a party to the application as she has vacated the rental unit. M.S testified that she vacated the rental unit sometime in June 2022 and advised the Landlord in May 2023. No specific date was provided as to when M.S vacated the rental unit or when she advised the Landlord. The Landlord's legal representative argued that M.S did not provide a valid notice to terminate the tenancy and because both the Tenants are named on the lease agreement, they are jointly liable as this is a joint tenancy.
2. I agree with the Landlord that this is a joint tenancy and that M.S did not provide a valid notice to terminate the tenancy. Except in very specific circumstances pertaining to domestic violence, the *Residential Tenancies Act, 2006* (the 'Act') does not permit one joint tenant to sever their interest in an ongoing joint tenancy in the absence of an agreement by all the parties. In this case, there is no evidence that the Landlord agreed to amend the tenancy agreement by removing M.S. as a Tenant. Therefore, M.S. continues to be a Tenant and the Landlord correctly named M.S as a party to the application.

3. I accept that M.S. likely vacated the rental unit sometime in June 2022, and hence is a tenant no longer in possession of the rental unit.
4. Subsection 87(1)(b) of the Act provides that a landlord may apply to the Board for rent arrears against a tenant no longer in possession of a rental unit so long as the tenant ceased to be in possession on or after the day subsection 18 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force. The provision referred to in subsection 87(1)(b) of the Act came into force September 1, 2021. In this case, M.S. vacated after September 1, 2021.
5. There is also a one-year limitation period on claims made against tenants no longer in possession of the rental unit. Subsection 87(1.1) of the Act provides that the application must be made no later than one year after the tenant vacated. Since M.S vacated the rental unit sometime in June 2022, and the Landlord filed their application on March 28, 2023, the Board has jurisdiction to hear the claims against M.S., and to issue an order requiring M.S. to pay rent arrears.
6. Normally, a landlord must file a L10 application against a tenant who has vacated the rental unit and must also serve the tenant with the application and a notice of hearing. However, in the circumstances of the case, I find that it is unnecessary to require the Landlord to re-file an L10 application for arrears against M.S. I find that M.S received adequate notice of this hearing, attended the hearing, was provided an opportunity to participate in the proceedings, and gave her evidence. Therefore, it would not be unfair to treat the claims against M.S as an L10 with this L1 application. This is also consistent with section 183 of the Act which directs the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant-Shawn Sawyer was still in possession of the rental unit. Based on the reasons above, M.S is correctly named as a party to the application.
3. The lawful rent is \$2,613.75. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$85.93. This amount is calculated as follows: \$2,613.75 x 12, divided by 365 days.
5. The Tenants paid \$150.00 to the Landlord since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$17,541.25.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

8. The Landlord collected a rent deposit of \$2,550.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$83.14 is owing to the Tenants for the period from April 1, 2022 to July 20, 2023.
10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Mr. Shawn Sawyer testified that he will be vacating the rental unit on August 13, 2023 and has found alternative accommodation. The Tenants did not provide sufficient evidence as to how they plan to pay the outstanding arrears of rent so they could continue their tenancy. Only a nominal payment was made after the filing of the application. The amount of arrears is substantial. Ultimately, I am not satisfied that the tenancy is viable.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$20,341.00 if the payment is made on or before August 13, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after August 13, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before August 13, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$14,198.96. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$85.93 per day for the use of the unit starting July 21, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before August 13, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 14, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before August 13, 2023, then starting August 14, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after August 14, 2023.

August 2, 2023
Date Issued

Inderdeep Padda
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 14, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before August 13, 2023

Rent Owing To August 31, 2023	\$20,305.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$150.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$20,341.00

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$16,796.10
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$150.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,550.00
Less the amount of the interest on the last month's rent deposit	- \$83.14
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants are entitled to	- \$0.00
Total amount owing to the Landlord	\$14,198.96
Plus, daily compensation owing for each day of occupation starting July 21, 2023	\$85.93 (per day)